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AMENDED IN ASSEMBLY APRIL 9, 2012

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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1988**

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**Introduced by Assembly Member Davis**

February 23, 2012

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An act to ~~add Chapter 7.5 (commencing with Section 52190) to Part 28 of Division 4 of Title 2 of~~ *amend Sections 60204 and 60207 of the Education Code, relating to pupils.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 1988, as amended, Davis. Pupils: ~~English learners; instructional materials; African American vernacular English.~~

*Existing law requires the State Board of Education to adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, and authorizes the state board to establish criteria for that purpose. Existing law requires the Instructional Quality Commission to recommend to the state board curriculum frameworks and criteria for evaluating instructional materials submitted for adoption by the state board. Under existing law, the commission is required to include in the criteria for English language arts instructional materials directions to publishers to incorporate instructional strategies to address the needs of English learners at every grade level, as specified.*

*Existing law requires the Academic Content Standards Commission to develop internationally benchmarked academic content standards, at least 85% of which are required to be the common core academic standards developed by the Common Core State Standards Initiative*

*consortium or another specified interstate collaboration. Existing law requires the state board to adopt revised curriculum frameworks and evaluation criteria that are aligned to the common core academic content standards developed by the consortium and adopted by the state board for mathematics and English language arts no later than May 30, 2013, and May 30, 2014, respectively. Existing law requires that the state board policies ensure that the English language arts curriculum frameworks and instructional materials for specified grades include, among other things, English language development strategies in the core subjects of mathematics, science, and history-social science.*

*This bill would require that the state board policies ensure that the English language arts curriculum framework for kindergarten and grades 1 to 12, inclusive, and instructional materials for kindergarten and grades 1 to 8, inclusive, include strategies to address the language and literacy needs of pupils who use African American vernacular English. The bill would also require the Instructional Quality Commission to include in the criteria for evaluating English language arts instructional materials directions to publishers to incorporate instructional strategies to address the language and literacy needs of pupils who use African American vernacular English, at every grade level and subject.*

~~(1) Existing law, which is inoperative, defines “pupils of limited English proficiency” as those who do not have the clearly developed English language skills of comprehension, speaking, reading, and writing necessary to receive instruction only in English at a level substantially equivalent to pupils of the same age or grade whose primary language is English. Existing law requires each school district that has one or more pupils who are English learners and, to the extent required by federal law, each county office of education and each charter school, to assess the English language development of each of those pupils upon initial enrollment in order to determine the level of proficiency of those pupils, and thereafter to assess each of those pupils annually until the pupil is redesignated as English proficient.~~

~~The inoperative Chacon-Moscone Bilingual-Bicultural Education Act of 1976 contains provisions regarding the identification criteria and allocation formulas that existing law requires to be used for funding purposes. One of the inoperative provisions requires a school district to ascertain the total number of pupils of limited English proficiency within the district and classify them according to their primary language, age, and grade level. This count is known as the “census of pupils of~~

limited English proficiency,” and consists of a determination of the primary language of each pupil enrolled in the school district and an assessment of the language skills of all pupils whose primary language is other than English. Another of the inoperative provisions requires a school district to report annually to the State Department of Education certain information regarding English learners.

This bill would define “standard English learners” as pupils of limited English proficiency whose primary language is English and who come from home environments where the absence of standard English or academic English spoken by their parents or primary caregivers has a significant impact on their level of English language proficiency. The bill would require a school district to complete a “census of pupils of limited standard English proficiency” that would consist in part of a determination of the standard English proficiency of these pupils and an assessment of their English language skills. The bill would require the results of this census to be reported to the State Department of Education, which would report this information to the State Board of Education along with the specialized learning programs in which those pupils are enrolled. The bill would require a school district to establish the length of instructional time for mainstream English language development. The requirements regarding the census, assessments, and length of instructional time for mainstream English language development would impose a state-mandated local program on school districts.

The bill would require the Superintendent of Public Instruction to review all existing English language development tests that assess the academic English language development of pupils and to determine if any meet specified requirements. If no suitable test exists, the bill would authorize the Superintendent, with approval of the state board, to contract to modify an existing test to meet the specified requirements. The bill would require the test to be used to identify pupils whose primary or home language is English and who are limited English proficient and to assess their progress in acquiring the skills of listening, reading, speaking, and writing academic English.

The bill would authorize the governing board of a school district to consider the use of any standards-based, culturally and linguistically responsive structured English language development instructional materials in reading, writing, speaking, and listening if the district documents the lack of available and appropriate materials, personnel, and training programs to address, at every grade level, the needs of all

~~standard English learners. The bill would require the department to maintain a list of available English language development curriculum materials to ensure that school districts are provided with as many high-quality standards-aligned instructional material options as possible. The bill would authorize a school district to request an instructional materials waiver, and would require the waiver request to be signed by the chairperson of the English language arts committee of the school district.~~

~~The bill would authorize the department to use specified funds to implement this act.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 60204 of the Education Code is amended  
2     to read:  
3     60204. The Instructional Quality Commission established  
4     pursuant to Section 33530 shall do all of the following:  
5     (a) Recommend curriculum frameworks to the state board.  
6     (b) Develop criteria for evaluating instructional materials  
7     submitted for adoption so that the materials adopted shall  
8     adequately cover the subjects in the indicated grade or grades and  
9     comply with the provisions of Article 3 (commencing with Section  
10    60040) of Chapter 1. The criteria developed by the commission  
11    shall be consistent with the duties of the state board pursuant to  
12    Section 60200. The criteria shall be public information and shall  
13    be provided in written or printed form to any person requesting  
14    that information.  
15    (1) The criteria for English language arts instructional materials  
16    shall include directions to publishers to align both lessons and  
17    teacher's editions, as appropriate, with English language  
18    development standards and incorporate strategies to address, at

1 every grade level, the needs of all English learners. The criteria  
2 for other subject areas shall include directions to publishers to  
3 incorporate strategies for English learners that are consistent with  
4 the English language development standards.

5 (2) The criteria also shall include directions to publishers to  
6 incorporate instructional strategies to address the needs of pupils  
7 with disabilities in both lessons and teacher's editions, as  
8 appropriate, at every grade level and subject.

9 (3) *The criteria for English language arts instructional materials*  
10 *shall include directions to publishers to incorporate instructional*  
11 *strategies to address the language and literacy needs of pupils*  
12 *who use African American vernacular English, in both lessons*  
13 *and teacher's editions, as appropriate, at every grade level and*  
14 *subject.*

15 (c) Study and evaluate instructional materials submitted for  
16 adoption.

17 (d) Recommend instructional materials for adoption to the state  
18 board.

19 (e) Recommend to the state board policies and activities to assist  
20 the department and school districts in the use of the curriculum  
21 framework and other available model curriculum materials for the  
22 purpose of guiding and strengthening the quality of instruction in  
23 the public schools.

24 (f) Advise and make recommendations to the state board,  
25 including, but not limited to, what policies and activities are needed  
26 to implement the state's academic content standards, and bring the  
27 state's curriculum frameworks, instructional materials, professional  
28 development programs, pupil assessments, and academic  
29 accountability systems into alignment with those standards.

30 *SEC. 2. Section 60207 of the Education Code is amended to*  
31 *read:*

32 60207. (a) Notwithstanding Section 60200.7, the state board  
33 shall adopt revised curriculum frameworks and evaluation criteria  
34 that are aligned to the content standards adopted pursuant to Section  
35 60605.8 for mathematics and English language arts no later than  
36 May 30, 2013, and May 30, 2014, respectively.

37 (b) State board policies shall ensure that the English language  
38 arts curriculum frameworks for kindergarten and grades 1 to 12,  
39 inclusive, and instructional materials for kindergarten and grades  
40 1 to 8, inclusive, include the English language development

standards as adopted by the state board in 1997 and revised thereafter, and English language development strategies in the core subjects of mathematics, science, and history-social science.

(c) State board policies shall ensure that curriculum frameworks for kindergarten and grades 1 to 12, inclusive, and instructional materials for kindergarten and grades 1 to 8, inclusive, include strategies to address the needs of pupils with disabilities in the four core subjects of mathematics, science, history-social science, and English language arts.

(d) *State board policies shall ensure that the English language arts curriculum frameworks for kindergarten and grades 1 to 12, inclusive, and instructional materials for kindergarten and grades 1 to 8, inclusive, include strategies to address the language and literacy needs of pupils who use African American vernacular English.*

(d)

(e) Each curriculum framework that the state board adopts shall describe, to the extent the state board deems appropriate, the manner in which content can be delivered to intentionally build all of the following skills into and across each content area:

(1) Creativity and innovation, including, but not limited to, thinking creatively, working creatively with others, and implementing innovations.

(2) Critical thinking and problem solving, including, but not limited to, reasoning effectively, using systems thinking, making judgments and decisions, and solving problems.

(3) Collaboration, including, but not limited to, working effectively in diverse teams, adapting to change and being flexible, demonstrating initiative and self-direction, working independently, demonstrating productivity and accountability, and demonstrating leadership and responsibility.

(4) Communication, including, but not limited to, communicating clearly and effectively through reading, writing, and speaking.

(5) Construction and exploration of new understandings of knowledge through the integration of content from one subject area to another and to provide pupils with multiple modes for demonstrating innovative learning.

~~SECTION 1. It is the intent of the Legislature to accomplish all of the following:~~

1     ~~(a) Shine a spotlight on the achievement gap and allow for~~  
2     ~~schools and school districts to provide locally tailored solutions~~  
3     ~~that accelerate learning for standard English learners while~~  
4     ~~increasing academic achievement for all pupils.~~

5     ~~(b) Provide a high-quality English language development~~  
6     ~~assessment for standard English learners that is aligned to the~~  
7     ~~California common core state standards and to support the~~  
8     ~~development and use of high-quality assessments that are aligned~~  
9     ~~with college- and career-ready standards to better determine~~  
10    ~~whether pupils have acquired the academic skills they need for~~  
11    ~~success. The diagnostic assessment system will better capture~~  
12    ~~skills, provide more accurate measures of pupil growth, and better~~  
13    ~~inform classroom instruction to respond to academic needs.~~

14    ~~(c) Provide for an initial assessment of standard English~~  
15    ~~language development to help identify pupils as standard English~~  
16    ~~learners who need to develop their skills in the following domains~~  
17    ~~of English language development: listening, speaking, reading,~~  
18    ~~and writing.~~

19    ~~(d) Provide for an annual standard English language~~  
20    ~~development assessment to be given to pupils who are classified~~  
21    ~~as English only but identified as standard English learners to see~~  
22    ~~how well they are developing their listening, speaking, reading,~~  
23    ~~and writing skills in English. The results of the annual standard~~  
24    ~~English language development assessment will be used, along with~~  
25    ~~other information, to help monitor each pupil's progress toward~~  
26    ~~language proficiency in standard English.~~

27    ~~(e) Provide flexibility by supporting state and local innovation~~  
28    ~~aimed at increasing the quality of instruction and improving pupil~~  
29    ~~achievement and the opportunity to innovate and develop locally~~  
30    ~~tailored solutions to the unique cultural and linguistic challenges~~  
31    ~~of every school district, school, and pupil.~~

32    ~~(f) Provide schools with achievement gaps the ability to adopt~~  
33    ~~research-based, culturally responsive interventions to close the~~  
34    ~~gap while increasing overall pupil achievement, ensuring the~~  
35    ~~success of all pupils, especially those who are farthest behind.~~

36    ~~SEC. 2. (a) The Legislature recognizes that existing curricular~~  
37    ~~tools may not be sufficient or are inadequate in promoting the~~  
38    ~~academic success of standard English learners and that this~~  
39    ~~population of pupils needs more direct instruction or explicit~~

1 support to address the academic challenges that often emerge as  
2 a result of their home language differences.

3 (b) The Legislature recognizes that for English language arts  
4 there may be a shortage of structured mainstream English language  
5 development textbooks, curriculum, and culturally responsive  
6 teacher training programs to meet the academic needs of standard  
7 English learners.

8 (c) The Legislature recognizes that educators need specific  
9 training to build more capacity to adjust instruction to meet the  
10 needs of standard English learners.

11 (d) Therefore, it is the intent of the Legislature to provide  
12 curriculum flexibility to school districts.

13 SEC. 3. Chapter 7.5 (commencing with Section 52190) is added  
14 to Part 28 of Division 4 of Title 2 of the Education Code, to read:

15  
16 CHAPTER 7.5. LIMITED-ENGLISH-PROFICIENT PUPILS WHOSE  
17 PRIMARY LANGUAGE IS ENGLISH  
18

19 52190. Unless the context otherwise requires, the definitions  
20 set forth in this section shall govern the construction of this chapter.

21 (a) “Basic skills” means mathematics and language arts,  
22 including, but not limited to, reading, writing, speaking, and  
23 listening.

24 (b) “Content standards” or “California common core standards”  
25 means the specific academic knowledge, skills, and abilities that  
26 all public schools in this state are expected to teach and all pupils  
27 are expected to learn in each of the core curriculum areas, at each  
28 grade level tested.

29 (c) “Curriculum” means an outline of the components of a given  
30 course of study designed to provide state direction to school  
31 districts in the provision of instructional programs.

32 (d) “Standard English language development assessment” means  
33 assessments of the current level of proficiency of a pupil that serves  
34 both of the following purposes:

35 (1) The identification of particular academic standards or skills  
36 a pupil has or has not yet achieved.

37 (2) The identification of possible reasons that a pupil has not  
38 yet achieved particular academic standards or skills.

39 (e) “District board” means the governing board of a school  
40 district.



1 (f) “Instructional materials” means all materials that are designed  
2 for use by pupils and their teachers as a principal learning resource  
3 and to help pupils to acquire facts, skills, or opinions or to develop  
4 cognitive processes. Instructional materials may be printed or  
5 nonprinted, and may include textbooks, technology-based  
6 materials, other educational materials, and tests.

7 (g) “Primary or home language” is the language the pupil first  
8 learned or the language that is spoken in the pupil’s home.

9 (h) “Standard English learners” means pupils of limited English  
10 proficiency whose primary language is English but reflects a unique  
11 cultural and linguistic history. Though their native historical  
12 language is not English and they are classified as English only,  
13 these pupils enter school with limited academic or standard English  
14 proficiency. They come from home environments where the  
15 absence of standard English or academic English spoken by their  
16 parents or primary caregivers has a significant impact on their  
17 level of English language proficiency. Their challenge in speaking,  
18 reading, writing, or understanding standard English language  
19 structure may deny these individuals the ability to meet California’s  
20 proficient level of achievement on annual content standards tests.  
21 The determination of which pupils are pupils of limited academic  
22 English proficiency shall be made in accordance with the  
23 procedures specified in Section 52196.

24 52191. (a) Each school district shall ascertain not later than  
25 the first day of March of each year the total number of pupils of  
26 limited standard English proficiency, whose primary language is  
27 English, as defined in Section 52190, within the district, and shall  
28 classify them according to their primary language, age, and grade  
29 level. This count shall be known as the “census of pupils of limited  
30 standard English proficiency,” and shall consist of a determination  
31 of the standard English proficiency of each pupil enrolled in the  
32 school district and an assessment of the English language skills of  
33 all pupils whose primary language is English.

34 (b) The census shall be taken by individual, actual count, and  
35 not by estimates or samplings. All pupils of limited standard  
36 English proficiency and special education pupils shall be counted.  
37 Special language assessment instruments, designated by the  
38 Superintendent and in compliance with the requirements of  
39 subdivision (j) of Section 56001, may be used for special education  
40 pupils who are standard English learners. The results of this census

1 shall be reported to the department not later than April 30 of each  
2 year. The previous census shall be updated to include new enrollees  
3 and to eliminate pupils who are no longer pupils of limited English  
4 proficiency and pupils who no longer attend school in the district,  
5 and shall be reported pursuant to Section 52192.

6 52192. The Superintendent, with the approval of the state board,  
7 shall prescribe census-taking methods, applicable to all school  
8 districts in the state, which shall include, but need not be limited  
9 to, the following:

10 (a) An initial assessment or determination of the primary or  
11 home language of each pupil enrolled in the school district. The  
12 primary or home language of new pupils shall be determined as  
13 they enroll. Once determined, the primary or home language need  
14 not be redetermined unless the parent or guardian claims there is  
15 an error. Home language determinations are required only once,  
16 unless the results are disputed by a parent or guardian.

17 (b) An annual assessment of the level of academic English  
18 language development of all pupils whose primary language is  
19 English. The speaking, reading, writing, and comprehension of  
20 the English language structure shall be assessed, except that reading  
21 and writing skills need not be assessed for pupils in kindergarten  
22 and grades 1 and 2. For those pupils who, on the basis of oral  
23 language proficiency alone, are clearly limited English proficient,  
24 assessment of reading and writing skills shall be necessary only  
25 to the extent required by subdivision (c). This assessment, which  
26 shall be made as pupils enroll in the district, shall determine the  
27 level of academic English proficiency for each pupil.

28 (c) (1) The initial assessment process shall be completed within  
29 90 days after the date of the pupil's initial enrollment, and shall  
30 be performed in accordance with rules and regulations adopted by  
31 the state board.

32 (2) The department shall conduct an equivalency study of all  
33 language proficiency tests designated for the identification of pupils  
34 of limited English proficiency to ensure uniformity of language  
35 classifications and to ensure the reliability and validity of the tests.  
36 Tests, materials, and procedures to determine proficiency shall be  
37 selected to meet psychometric standards and administered so as  
38 not to be racially, culturally, or sexually discriminatory.

1     ~~(3) The department shall annually evaluate the adequacy of,~~  
2     ~~and designate, the instruments to be used by school districts, and~~  
3     ~~these instruments shall be available by March 15 of each year.~~

4     ~~(4) The assessments shall be conducted by persons who are~~  
5     ~~adequately trained and prepared to evaluate cultural and ethnic~~  
6     ~~factors, and who shall follow procedures formulated by the~~  
7     ~~Superintendent to determine which pupils are pupils of limited~~  
8     ~~standard English proficiency, as defined in Section 52190. A school~~  
9     ~~district may require that the assessment be conducted by persons~~  
10    ~~who hold a valid, regular California teaching credential and who~~  
11    ~~meet the other qualifications specified in this paragraph.~~

12    ~~52193. The department shall review the results of the census~~  
13    ~~each year. If the information provided by a school district appears~~  
14    ~~to be inaccurate or if parents, teachers, or counselors file a formal~~  
15    ~~written complaint that the census is inaccurate, the department~~  
16    ~~shall audit the district's census. If the department concludes that~~  
17    ~~the census was incorrectly taken, or the results appear to be~~  
18    ~~inaccurate, the department shall require another census to be taken~~  
19    ~~and the corrected information to be provided.~~

20    ~~52194. Pertinent information from the initial assessment of~~  
21    ~~primary or home language and annual assessment of the level of~~  
22    ~~academic English development for each pupil whose primary~~  
23    ~~language is English shall be retained by the school district as long~~  
24    ~~as the pupil is enrolled in the district. Each school district shall~~  
25    ~~report annually to the department, and the department shall report~~  
26    ~~to the state board, the following data:~~

27    ~~(a) The number of pupils whose primary or home language is~~  
28    ~~English.~~

29    ~~(b) The number of pupils who are of limited English proficiency.~~

30    ~~(c) The number of pupils whose primary language is English~~  
31    ~~and who are enrolled in classes, including, but not limited to,~~  
32    ~~specialized learning programs similar to English language~~  
33    ~~mainstream.~~

34    ~~(d) The number of pupils who have met the language~~  
35    ~~reclassification criteria for exit criteria pursuant to Section 52195.~~

36    ~~52195. (a) The length of instructional time for mainstream~~  
37    ~~English language development shall be established by each school~~  
38    ~~district in which pupils of limited English proficiency are enrolled.~~

39    ~~(b) The state board shall adopt regulations setting forth standards~~  
40    ~~for mainstream English language development to be adopted by~~

1 school districts. The state board's regulations, at a minimum, shall  
2 prescribe an assessment process that utilizes multiple criteria as  
3 required by this section.

4 (e) In following the state board's regulations, each school district  
5 shall establish criteria for determining when pupils of limited  
6 English proficiency have developed the academic English language  
7 skills of listening, speaking, reading, and writing necessary to  
8 succeed in a regular instructional setting.

9 52196. (a) (1) The Superintendent shall review all existing  
10 tests that assess the academic English language development of  
11 pupils. The tests shall include, but not be limited to, an assessment  
12 of the English language proficiency of these pupils in reading,  
13 writing, speaking, and listening. The Superintendent shall  
14 determine which tests, if any, meet the requirements of subdivisions  
15 (b) and (c). If any existing test or series of tests meet these criteria,  
16 the Superintendent, with approval of the state board, shall report  
17 to the Legislature on its findings and recommendations.

18 (2) If no suitable test exists, the Superintendent shall explore  
19 the option of a collaborative effort with other states to develop a  
20 test or series of tests and share test development costs. If no suitable  
21 test exists, the Superintendent, with approval of the state board,  
22 may contract to develop a test or series of tests that meet the criteria  
23 of subdivisions (b) and (c) or may contract to modify an existing  
24 test or series of tests so that it will meet the requirements of  
25 subdivisions (b) and (c).

26 (3) The Superintendent and the state board shall release a request  
27 for proposals for the development of the test or series of tests  
28 required by this subdivision. The state board shall select a  
29 contractor or contractors for the development of the test or series  
30 of tests required by this subdivision, to be available for  
31 administration during the 2013-14 school year.

32 (4) The Superintendent shall apportion funds appropriated to  
33 enable school districts to meet the requirements of subdivision (d).  
34 The state board shall establish the amount of funding to be  
35 apportioned per test administered, based on a review of the cost  
36 per test.

37 (5) An adjustment to the amount of funding to be apportioned  
38 per test is not valid without the approval of the Director of Finance.  
39 A request for approval of an adjustment to the amount of funding  
40 to be apportioned per test shall be submitted in writing to the

1 Director of Finance and the chairpersons of the fiscal committees  
2 of both houses of the Legislature with accompanying material  
3 justifying the proposed adjustment. The Director of Finance is  
4 authorized to approve only those adjustments related to activities  
5 required by statute. The Director of Finance shall approve or  
6 disapprove the amount within 30 days of receipt of the request and  
7 shall notify the chairpersons of the fiscal committees of both houses  
8 of the Legislature of the decision.

9 (b) (1) The test or series of tests developed or acquired pursuant  
10 to subdivision (a) shall have sufficient range to assess pupils in  
11 grades 2 to 12, inclusive, in English listening, speaking, reading,  
12 and writing skills. Pupils in kindergarten and grade 1 shall be  
13 assessed in English listening and speaking, once an assessment is  
14 developed. The early language development assessment shall be  
15 administered for a period of three years beginning after the initial  
16 administration of the assessment or until July 1, 2013, whichever  
17 occurs first. Six months after the results of the last administered  
18 assessment are collected, but no later than January 1, 2014, the  
19 department shall report to the Legislature on the administration of  
20 the kindergarten and grade 1 early language development  
21 assessment results, as well as on the administrative process, in  
22 order to determine the appropriate length of instructional time for  
23 mainstream English language development.

24 (2) In the development and administration of the assessment  
25 for pupils in kindergarten and grade 1, the department shall  
26 minimize any additional assessment time, to the extent possible.  
27 To the extent that it is technically possible, items that are used to  
28 assess listening and speaking shall be used to measure early  
29 language development skills. The department shall ensure that the  
30 test and procedures for its administration are age and  
31 developmentally appropriate. Age and developmentally appropriate  
32 procedures for administration may include, but are not limited to,  
33 one-on-one administration, a small group setting, and orally  
34 responding or circling a response to a question.

35 (c) The test or series of tests shall meet all of the following  
36 requirements:

37 (1) Provide sufficient information about pupils at each grade  
38 level to determine levels of English proficiency ranging from no  
39 English proficiency to fluent English proficiency with at least two  
40 intermediate levels.

~~(2) Be deemed nonbiased and adequately reliable and valid by culturally responsive experts and technical experts.~~

~~(3) Be capable of administration to pupils with English as a primary language.~~

~~(4) Be capable of administration by classroom teachers.~~

~~(5) Yield scores that allow comparison of the growth of a pupil over time, can be tied to readiness for various instructional options, and can be aggregated for use in the evaluation of program effectiveness.~~

~~(6) Not discriminate on the basis of race, ethnicity, or gender.~~

~~(7) Be aligned with California common core standards for English language arts adopted by the state board.~~

~~(8) Be age and developmentally appropriate for pupils.~~

~~(d) The test shall be used for the following purposes:~~

~~(1) To identify pupils whose primary or home language is English and who are limited English proficient.~~

~~(2) To assess the progress of standard English learners in acquiring the skills of listening, reading, speaking, and writing in academic English.~~

~~(e) (1) A pupil in any of grades 3 to 12, inclusive, shall not be required to retake those portions of the test that measure English language skills for which he or she has previously tested as advanced within each appropriate grade span, as determined by the department in accordance with paragraph (8) of subdivision (e).~~

~~(2) Notwithstanding paragraph (1), a pupil in any of grades 10 to 12, inclusive, shall not be required to retake those portions of the test that measure English language skills for which he or she has previously tested as early advanced or advanced.~~

~~(3) This subdivision shall not be implemented unless and until the department receives written documentation from the United States Department of Education that implementation is permitted by federal law.~~

~~52197. A district board may consider the use of any standards-based, culturally and linguistically responsive structured English language development instructional materials in reading, writing, speaking, and listening if a district documents the lack of available and appropriate materials, personnel, and training programs to address, at every grade level, the needs of all standard-English learners. The department shall maintain a list of~~

1 available English language development curriculum materials  
2 consistent with English language development standards and  
3 teacher training programs to ensure that school districts are  
4 provided with as many high-quality standards-aligned instructional  
5 material options as possible, so that educators may have many  
6 rigorous options in choosing the best materials that meet the needs  
7 of all pupils, including standard English learners, English learners,  
8 and pupils with disabilities, and that ensure that their pupils are  
9 able to master the academic content standards adopted by the state  
10 board pursuant to Section 60605.8. If necessary, an instructional  
11 materials waiver can be requested. The waiver is renewable yearly.  
12 Each waiver request shall be signed by the chairperson of the  
13 English language arts committee of the school district.

14 52198.—The department shall use federal carryover funds  
15 received pursuant to Title I of the federal No Child Left Behind  
16 Act of 2001 (20 U.S.C. Sec. 6301 et seq.), and any other available  
17 state and federal funds, to implement this chapter.

18 SEC. 4.—If the Commission on State Mandates determines that  
19 this act contains costs mandated by the state, reimbursement to  
20 local agencies and school districts for those costs shall be made  
21 pursuant to Part 7 (commencing with Section 17500) of Division  
22 4 of Title 2 of the Government Code.